

OFFICE OF THE ATTORNEY GENERAL



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APR 10 1995

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Honorable Dan Jones
Montgomery County Sheriff's Office
P. O. Box 4219
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Sheriffs - Garnishment -
Service of Process and
Summons - Rules of Civil
Procedure, Rule 4(c)

Service of process of garnish-
ment and of notice to defend-
ant under Section 6-6-393,
Code, and Rule 64A, A.R.C.P.,
should be as set forth in
Rule 4(c), Alabama Rules of
Civil Procedure, and may
differ for different types of
garnishees.

Dear Sheriff Jones:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

Does Rule 4(c)(1) apply to service
of defendant's copy of garnishment to be
left with company agent and/or with some-
one of suitable age at individual's dwell-
ing house?

FACTS, LAW AND ANALYSIS

Under the garnishment statutes, §§ 6-6-370, et seq., Code of Alabama 1975, we find, at § 6-6-393, the following:

"Upon the filing of the affidavit or the affidavit and bond, as the case may be, the officer filing the same must issue process of garnishment and a copy thereof for each garnishee, to be served by the proper officer, requiring the garnishee to appear within 30 days and file an answer, upon oath, whether, at the time of the service of the garnishment, at the time of making his answer or at any time intervening between the time of serving the garnishment and making the answer he was indebted to the defendant and whether he will not be indebted in future to him by a contract then existing, whether by a contract then existing he is liable to him for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property or which is payable in personal property and whether he has not in his possession or under his control money or effects belonging to the defendant."

In the case of Franklin Life Insurance Company v. The Peoples Bank and Trust Company, 594 So.2d 67 (Ala. 1992), Justice Steagall, writing for the Alabama Supreme Court, quoted the North Dakota Supreme Court with approval, from City of Grand Forks v. Mik-Lan Recreation Ass'n, Inc., 421 N.W.2d 806 (N.D. 1988), as follows:

"It is well settled that service on an officer or agent of a corporation, who has an interest in the action or the claim antagonistic to the interest of the corporation, is invalid, although the officer or agent is otherwise a statutorily authorized person to receive service on behalf of the corporation."

Rule 4(c), A.R.C.P., provides, in pertinent part:

"Service of process, except service by publication as provided in Rule 4.3, shall be made as follows:

"(1) INDIVIDUAL. Upon an individual, other than an infant or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

. . . .

"(6) CORPORATION. Upon a corporation either domestic or foreign by serving the agent authorized by appointment or by law to receive service of process or by serving the corporation by certified mail at any of its usual places of business or by serving an officer or an agent of the corporation;

"(7) PARTNERSHIP. Upon a partnership, a limited partnership, or a limited partnership association by serving the entity by certified mail at any of its usual places of business or by serving a partner, limited partner, or manager or member;

"(8) UNINCORPORATED ORGANIZATION OR ASSOCIATION. Upon an unincorporated organization or association by serving it in its entity name by certified mail at any of its usual places of business or by serving an officer or agent of any such organization or association or an officer

or agent of any branch or local of such organization or association;

"(9) PROFESSIONAL ASSOCIATION OR CORPORATION. Upon a professional association or professional corporation by serving the association or corporation in its corporate name by certified mail at the place where the corporate offices are maintained or by serving a shareholder, or by serving the agent authorized by appointment or by law to receive service of process. . . ."

The term "garnishment" is defined in § 6-6-370 as a process to reach and subject assets of a defendant which are in possession of a third party, the "garnishee." Thus, there are three parties to a garnishment proceeding: the plaintiff and defendant in the underlying litigation, and the garnishee. There may be, of course, more than one garnishee.

Rule 64A, A.R.C.P., requires notice to the defendant when an appearance has not been entered for the defendant in the underlying litigation. This notice is to be served upon the defendant as set forth in Rule 4, and must contain the notice set forth in Rule 64A.

Service of process of garnishment issued pursuant to § 6-6-393 should be upon the garnishee pursuant to Rule 4 in the manner appropriate to the type of entity involved. An individual garnishee should be served as set forth in Rule 4(c)(1), while a corporation, partnership, unincorporated association, or professional association should be served as set forth in Rule 4(c)(6), (7), (8), or (9) respectively, as the case may be.

CONCLUSION

Service of the notice to defendant required by Rule 64A, A.R.C.P., should be as set forth in Rule 4 and service of process of garnishment should be as set forth in Rule 4(c)(1), (6), (7), (8), or (9) depending upon the type of entity which is a garnishee.

Honorable Dan Jones
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I hope this sufficiently answers your question. If our office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

JEFF SESSIONS
Attorney General

By:

A handwritten signature in cursive script, appearing to read "James R. Solomon Jr.", written in dark ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/PCD/jho
J3.95B/OP